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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 626 OF 1991

Dasharath Babu Patil & Anr. ...Appellants.

Vs.

The State of Maharashtra & Anr. ...Respondents.

ALONG WITH

FIRST APPEAL NO. 627 OF 1991

Vithal Appu Patil ...Appellant.

Vs.

The State of Maharashtra & Anr. ...Respondents.

Mrs. G.P.Mulekar, AGP for the State.

Mr. S.M.Kamble for the respondents.

CORAM : ANOOP V. MOHTA,J.

DATED : 28th September, 2007

ORAL JUDGMENT:-

1. The original applicants being aggrieved by the order of rejection of their reference application dated 4th October, 1990 passed by 2nd Additional District Judge, Kolhapur preferred these appeals.

2. Admittedly the reference was dismissed without the

evidence as the claimants failed to appear before the Court.

3. The Division Bench of Bombay High Court in **First Appeal No. 196/1993 (Smt.Laxmibai Ramdas Buva Vs. State of Maharashtra & Ors.),** along with other appeals by Judgment dated 16th April, 1993 on the similarly situated and connected matters observed in para 5,6 and 7 as under:-

> "5. After hearing counsel for the parties and after perusing impugned judgments and orders, we are satisfied that this is a case where appellants deserve to be granted one more opportunity. For no fault of the appellants they would be losing the chance to prove before the trial Court that they are entitled for enhanced compensation in respect of the lands which have been acquired by the State of Maharashtra. Since the claimants have been deprived of the property, in the facts and circumstances of the case and to do justice between the parties, we are of the opinion that the impugned decrees and orders deserve to be quashed and set aside.
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> 6. In the result, First Appeals Nos. 196/93, 624/91, 625/91 and 628/91 are allowed. The impugned judgments and decrees/awards passed by the trial Court are quashed and set aside and the matters are remitted back to the trial Court for disposal in accordance with law. The appellants-claimants agree to pay costs of Rs.1,000/- in each First Appeal to the respondents. Payment of costs is condition precedent. Learned

> Advocate for the appellants has passed on cheque to the advocate for the Respondents in respect of the costs in all these four appeals.
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> 7. It is also agreed between the parties that they will remain present before the trial Court for hearing of these References on 14th June, 1993. Claimants to keep their evidence ready on 14th June, 1993."

4. Taking note of this, I am of the view that the present appeals are also need to be disposed of on above line.

5. The learned counsel appearing for the State, however, submitted that the respondent State should not be compelled to pay the interest at the rate of 15% p.a. on the amount if enhanced in view of the delay in making the payment if any. Without observing anything on this submission, I am of the view that the respondent State is at liberty to raise this plea before the trial Court at the time of hearing of these references on merit.

6. Resultantly, the impugned orders are quashed and set aside. The matters are remitted back to the trial Court for disposal in accordance with law.

7. The appellant shall pay costs of Rs.2,000/-

(Rupees two thousand only) in each first appeals to the respondent, within six weeks. The payment of costs is condition precedent.

8. Both the parties are agreed that they will remain present before the trial Court for hearing of these references on 28th November, 2007.

9. The claimants to keep their evidence ready on that day.

10. The appellants-claimants to inform the District Government Pleader, Kolhapur, also.

11. Both the appeals are accordingly allowed with no order as to costs.

(ANOOP V. MOHTA, J.)